



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA-2020-0197]

Commercial Driver's License Standards: Regulatory Guidance Concerning Third Party Testers Conducting the Knowledge Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Regulatory guidance.

SUMMARY: FMCSA amends its regulatory guidance to explain that FMCSA's current statutory authorities and regulations do not prohibit third party testers from administering the commercial driver's license knowledge tests for all classes and endorsements. SDLAs may accept the results of knowledge tests administered by third party testers in accordance with existing knowledge test standards and requirements set forth in 49 CFR part 383, subparts G and H.

DATES: This guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the CDL Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, nikki.mcdavid@dot.gov, 202-366-0831.

SUPPLEMENTARY INFORMATION:

I. Background

On May 9, 2011, FMCSA published the 49 CFR parts 383, 384 and 385, Commercial Driver's License Testing and Commercial Learner's Permit Standards final rule (76 FR 26854) that amended the commercial driver's license (CDL) knowledge and

skills testing standards and established new minimum Federal standards for States to issue the commercial learner's permit. The final rule also set forth the Federal standards for States to allow third party testers to administer the CDL skills test.

On April 3, 2020, the Virginia Department of Motor Vehicles (VA DMV) requested an exemption from 49 CFR 383.75 to allow non-government third party testers to administer knowledge tests for CDL and CLP applicants without a State examiner being present. The VA DMV's request was prompted by the closure of VA DMV service centers resulting from the COVID-19 public health emergency. In response to the VA DMV's request, FMCSA indicated that applicable statutes and regulations do not currently prohibit States from allowing a third party to administer CDL and CLP knowledge tests. The Agency also noted its intention to revise the existing guidance, set forth below, to clarify this point.

Regulatory guidance question 1 for 49 CFR 383.75, "Third Party Testing," first issued in 1993 (58 FR 60734, 60739 (Nov. 17, 1993)) and most recently reissued in 2019, states:

Question 1: May the CDL knowledge test be administered by a third party?

Guidance: No. The third party testing provision found in § 383.75 applies only to the skills portion of the testing procedure. However, if an employee of the State who is authorized to supervise knowledge testing is present during the testing, then FMCSA regards it as being administered by the State and not by a third party. (84 FR 8464, 8472 (Mar. 8, 2019); 62 FR 16370, 16399 (Apr. 4, 1997)).

FMCSA has reconsidered this guidance and concludes that nothing in the Agency's current authorities in 49 U.S.C. chapters 311 or 313, or in 49 CFR parts 383 and 384, prohibits States from permitting third party testers to administer CDL knowledge tests. Accordingly, the Agency amends regulatory guidance question 1 for 49 CFR 383.75 to explain that a State may permit third parties to administer CDL knowledge tests. Pursuant to 49 CFR 384.202, States opting to permit this practice must adhere to current CDL knowledge test standards and requirements set forth in 49 CFR part 383, subparts G and

H. FMCSA is currently working on a Notice of Proposed Rulemaking to more fully address the States' use of third party knowledge testers.

II. Regulatory Guidance

FMCSA issues the following guidance:

Regulatory Guidance to 49 CFR part 383 – Commercial Driver's License

Standards Section 383.75 Third Party Testing, Guidance ID No. FMCSA-CDL-383.75-Q1-M

Question 1: May States allow third party testers to administer CDL knowledge tests for all classes and endorsements, without any State examiner being present?

Guidance: Yes. FMCSA's current statutory authorities and regulations do not prohibit States from permitting third party testers to administer CDL knowledge tests. While FMCSA encourages States relying on third party knowledge testers to follow the training and record check standards currently applicable to State CDL knowledge examiners, as set forth in 49 CFR 384.228, this is not a regulatory requirement. If an employee of the State who is authorized to supervise knowledge testing is present during the testing, then FMCSA regards it as being administered by the State and not by a third party.

FMCSA notes that this guidance is intended only to provide clarity to the public regarding existing requirements under the law. The guidance does not have the force and effect of law and is not meant to bind the public in any way.

Robin Hutcherson
Acting Administrator